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Legal Department

A BRANCH

Subject:— Opinions under the Code of Criminal Procedure, 1898

P 718/E)

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105-A

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on such duty has entitled his dissociation from the work of a magistrate and his appointment to that duty involves an implicit withdrawal of his powers. In Emperor V. Karimbux (A.I.R. 1933 Sind 393 & 27 S.L.R. 427) it was held that where a Subordinate Judge is transferred from one place to another he may or may not be acalled upon to perform additional duties of a Magistrate. He is not transferred quo Magistrate but quo Subordinate Judge. On transfer he to use the words of section 40 Cr. P.Code, is not appointed to a post of the same nature, that is to say a post of a Sub-judge. When he is combined but only t o the post of a Sub-Judge. When he is required to perform additional duties of a Magistrate in the place to which he is transferred a fresh notification in that behalf is necessary. It follows from these rulings that when an officer is appointed a Magistrate, he is invested with Magisterial powers only with respect to a district or particular area thereof. On transfer to another district quo Magistrate, he continues by virtue of sec- 40, Criminal Procedure Code to be a Magistrate in the view district. But when he is transferred to another district or t o the Secretariat to hold an appointment entirely different.

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from that of a Magistrate section 40 have will have no application and he cannot exercise the powers of a Magistrate unless such powers are freshly notified.

Sd/ P.N.M.
25/1/45.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 39-Confl., dated the 26th January 1945.

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It is observed in H.P. office note at page 132-133 ante thus: "But when they (I.C.S. officers) are appointed to a post which is of different nature post which does not carry any magis terial work they do not retain the magisterial powers given to them on their former appointments. Thus though all the I.C.S. officers in the Secretarial were invested with magisterial powers once, they cannot be said to retain those powers now. They therefore do not remain magistrate any longer." A(F) wants to know the authority for the aforesaid statement and further observes: If my memory serves me there is a High Court case that a magistrate remains a magis trate until the powers are withdrawn by a notification (a Kan nara case??) even though his jurisdiction ceases on his trans fer. I believe that mechanically I am still a 1st Class Magis trate myself." The R.L.A. is requested to advise.

The Kanara Case which A(F) has in mind appears to be in re Laxmi Narayan Marki (30 B.L.R.1051) . In that case a Mahalkari was invested by name by a Government notification with the powers of a Second Class Magistrate and while he was holding an inquiry under section 176 of the Criminal Procedure Code, the Collector on the report of the District Superintendent of Police stopped the inquiry and later on suspended the Mahalkari and relieved him of his magisterial powers until he was validly suspended or dismissed by the Local Government under section 28 of the Criminal Procedure Code." The ratio decidendi of that case is as observed by A(F) that a person invested by name with magisterial powers continues to exercise those powers until they are withdrawn by Government by a notification under section 26 of the Criminal Procedure Code, but that case is clearly distinguished from the present case where I.C.S. officers transferred to the Secretariat have not to exercise in magistrate powers. This point was considered in Ramasam v. Kotti holi (32M.L.J. 129) where it was held. "Where an officer is permanently appointed to other duties in the Secretarial or where dissociated from magisterial work and retains no connection with the district or locality in which he can exercise powers, he retains no lien on his magisterial powers, because his absence on such duty has created this dissociation for the work

(junction add slip A here)

on such duty has entitled his dissociation from the work of a magistrate and his appointment to that duty involves an implicit withdrawal of his powers. In Emperor V. Marimbux (A.I.R. 1933 Sind 393 & 27 S.L.R. 427) it was held that where a Subordinate Judge is transferred from one place to another he may or may not be acalled upon to perform additional duties of a Magistrate. He is not transferred quo Magistrate but quo Subordinate Judge. On transfer he to use the words of section 40 Cr. P.Code, is not appointed to a post of the same nature, that is to say a post of a Sub-judge. When he is combined but only to the post of a Sub-Judge. When he is required to perform additional duties of a Magistrate in the place to which he is transferred a fresh notification in that behalf is necessary. It follows from these rulings that when an officer is appointed a Magistrate he is invested with Magisterial powers only with respect to a district or particular area thereof. On transfer to another district quo Magistrate, he continues by virtue of sec- 40, Criminal Procedure Code to be a Magistrate in the view district. But when he is transferred to another district or to the Secretariat to hold an appointment entirely different.

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[redacted]in A

On appeal by the Magistrate the High Court held:" [redacted]hough the applicant was suspended as a Mahalkari he still [redacted]ontinued to be a Second Class Magistrate

S.A.S. "A" The petitioner does not claim compensation as a legal right. The point raised by H.D. does not therefore arise. "A"

Id./ R.T.K. 8/2

A.L.R. I agree. Reply may be S.A.S's note

Id./- R.S.H. 8/2.

R.L.A. - Reply A - A.

Id./ P.N.M. 13/2/45.

U.R. to H.D. No. 1298 dt. 14/2/45.

"A" There is no legal objection to the course proposed by R.D. the attention of R.D. is however invited to the recent opinion of the R.L.A. where it is pointed out that the approval of the Governor would be necessary under cl(b) of section 197(1)Cr. P.C. "A"

Ide/ R.T.K. 17/2

A.L.R. Ide/ R.S.H. 19/2

R.L.A. Ide/ P.N.M. 19/2/45

A - A - Reply

U.R. to R.D. No. 79-Confl. dt. 21-2-1945.

 Office of the R.L.A.

The sanction of the Governor under section 197 Criminal Procedure Code to prosecute Mr. Brown will not be necessary provided the conditions of his service empower the Chief Justice to remove him from office without the sanction of the Provincial Government; and the fact that Mr. Brown is a gazetted officer is irrelevant in this connection.

Sd.

o.c.

Remembrancer of Legal Affairs.

U.R. to H.D. No 130-Confl. dated the 22nd March 1945.

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The proper person to originate and conduct prosecution in the City of Bombay is the Public Prosecutor. H.D. may therefore issue orders accordingly under rule 26(e) of the Law Officers Rules requesting the Public Prosecutor to sift in the first instance the materials placed before him by the Police and to formulate charges in consultation with the Advocate General if necessary under rule 13 of the Law Officers Rules. The question whether the Advocate General should be requested to appear in the Magistrate's Court and in the Departmental inquiry may be considered at a later stage.

Sd.

O.C.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 167-Genfl dated the 7th April 1945.

VGP.

13-6-56.

The view taken in H.D. office note dated 14-3-1945 at page 7 ante is correct.

Section 68(2) of the Criminal Procedure Code declares that a summons shall be served by a police officer or subject to such rules as the Provincial Government may prescribe in this behalf by an officer of the court or other public servant. It appears that the Bombay Government has not prescribed any rules under section 68(2). If so, the service of a summons by the Inspectors of the Supply Department would be competent provided they are public servants within the meaning of section 21, Indian Penal Code; and no special authorisation would be necessary.

Sd.

O.C.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 2787, dated the 11th April 1945.

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The law in India does not recognise different types of acquittal. What Rule 152 of the B.C.S. Rules perhaps refers to is the case where it is clear from the judgement that despite the acquittal, blame of some kind attaches itself to the person acquitted. Mr. Haskell admitted that he accepted Rs. 825 from Mr. Lobo, but alleged that it was as a gift to a School and a dispensary The Court disbelieved this explanation but held that the prosecution did not prove that Mr. Haskell ---- accepted this amount as a bribe. The Court has made no criticism of Mr. Haskell for accepting this amount. It is not clear from the judgement that any blame attaches itself to him.

Sd.

O.C.

Remembrancer of Legal Affairs.

U.R. to G.D. No. 266-Confl. dated the 1st May 1945.

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The general rule is that a complaint may be made by anybody whether he be an aggrieved person or not. But section 198 of the Code of Criminal Procedure, 1898, modifies that general rule by providing that no Court shall take cognisance of the offence of defamation except upon a complaint made by some person aggrieved by such offence. "Person aggrieved" means in nearly all cases the person defamed. Most of the High Courts in India have held that the reputation of a husband is so intimately connected with that of his wife that a husband is undoubtedly a person aggrieved by the defamation of hs wife. But the same close relationship cannot be shown between Government and its servants. Thus in Gaya, 26 o.c. 44, it was held that where a police officer has been defamed, a complaint by his official superior on the ground that the good name of the police force has ~~xxxxx~~ been attacked could not be entertained. Similarly, in Beauchamp v. Moore, 26 Mad. 45 it was held that where a newspaper published statements which were alleged to be defamatory of the Health Officer and his subordinates, it was held that the President of the Municipality was not a person aggrieved within the meaning of section 198 Criminal Procedure Code merely because he had a control over those officers, and that by the imputation made against his subordinate his own conduct and administration had not been impugned. Thus A(F) in para.7 of his note dated 17-11-1944 has rightly assumed that a prosecution for defamation of one of its officers cannot be instituted by the Crown.

On the question whether or not a defamed Government servant should be compelled to clear his reputation by filing a suit, I am in general agreement with the views expressed by A(F) . It seems inadvisable to lay down any hard and fast rule in the matter. Definition may be in respect of the Government servant's public or private character cases of the latter type are doubtless few and far between and normally ~~xxx~~ it is left to the discretion of the Government servant to pursue his legal remedies without pressure from Government.

In some cases, however, a grave attack on his private reputation, imputing immorality or base conduct may quite conceivably affect the prestige of Government which might be difficult for Government to ignore. Each case must therefore be considered on its own facts and Government should have the discretion to decide whether a defamed Government servant should be left to his own remedies or whether he should be asked to clear his reputation in Court.

Id/ P.N.M. 1/6/45.

o.c.

Re, Remembrancer of Legal Affairs.

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UPLO PRSD. No 3410/1-5-45

The High Court considers that an order of the Appellate Court can be carried out more quickly if the Appellate Court is always kept informed of the jail where the applicant convict is detained or transferred so that the writ can be sent direct to that jail and suggests that rule 522 of the Bombay Jail Manual may be amended for the purpose. The Secretary H.D. is of the opinion that the High Court seems unable to appreciate the plain language of section 425 Criminal Procedure Code and requests the R.L.A. to consider the suggestion made by the High Court.

Sub-section(1) of section 425 Criminal Procedure Code Provides that the order made by the High Court on appeal shou d be certified to the lower Court whereupon under sub-section (2) that Court shall make such orders as are conformable to the judgement or order of the High Court and if necessary the record should be amended accordingly. Section 442 provides that when a case is revised under this Chapter by the High Court it shall in manner hereinafter before provided by section 425 certify its decision or order to the Court by which the finding sentence or order revised was recorded or passed and the Court or the Magistrate to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified, and if necessary the record shall be amended in accordance therewith. Rule 147 (iii) of the High Court Criminal Circular Orders provides that when a case is decided on appeal or revised by the High Court certified its order will proceed under the provisions of sections Court or the Magistrate to which the High Court 425 or 442 of the code of Criminal Procedure to issue when necessary a fresh warrant or order to the Jailer. It is clear from these provisions that it would not be open to the High Court to send its writ direct to the jail authority nor would it be open to the jailor to act on such direct writ. Consequently the amendment of rule 522 of the Bombay Jail Manual that he Appellate Court should be kept informed of the jail where the applicant convict is detained or transferred, though unobjectionable would hardly be enough to solve the present difficulty unless sections 425 and 442 Criminal Procedure Code are suitably amended enabling the High Court to send its writs direct to the jail authorities for

compliance. The view taken by the Secretary H.D. is correct.

Id/ P.N.M.
12/5/55.

o.c.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 3714 dated the 15th May 1945.

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13-6-56.

Government's sanction to prosecute Mr, V.D. Deshpande for the offence under section 161, Indian Penal Code would be essential under section 197(1), Criminal Procedure Code since he is not removable from his office of Inspector save with the sanction of Government; and it is advisable to show the draft order to H.E. before issue (see R.L.A's opinion No 347 dated 15-1-1944).

2. Although the Criminal Procedure Code does not prescribe any particular form for sanction under section 197(1), it would be legally expedient to insert in the preamble of the G.R. a concise statement of facts constituting the offence. The draft G.R. at page 19 ante is defective in that respect.

Sd.

e.e.

Remembrancer of Legal Affairs.

U.R. to F.D. (Supply), No. 5604, dated the 30-7-55.

VGP.

13-6-56.

All the points raised by the Chief Law Instructor in paras. 6 and 7 of his note at pp.11-12- ante are fully covered by the High Court decision in Imperator v. Bayaji Appaji Kote. As pointed out in that decision a complaint of the court under section 195(1) (b), Criminal Procedure Code, would be necessary in all cases of ~~xxx~~ prosecution for the offence under section 211, I.P.C., irrespective of whether the court has granted "s" summary with or without an inquiry suo motu or on a regular complaint. The attention of the Chief Law Instructor should be drawn by H.D. to the decision of the High Court in Imperator vs. Bayaji Kote.

Sd.

O.C.

Remembrancer of Legal Affairs.

U.B. to H.D. No. 6137 dated the 20th August 1945.

VGP.

13-6-46.